

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH B. GIBBS,

Plaintiff,

v.

A. HERRERA, et al.,

Defendants.

No. 2:21-cv-02188 TLN AC

ORDER

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. On September 20, 2023, the Ninth Circuit Court of Appeals vacated the dismissal of this action and remanded the case for the district court to consider in the first instance documentation that plaintiff paid the filing fees prior to dismissal. ECF No. 24. This court has reviewed plaintiff's proof of payment and has updated the docket to reflect that the filing fees have been paid to allow plaintiff to proceed with this action.

A review of plaintiff's complaint indicates that it is missing the last ten pages. See ECF No. 1. This complaint was electronically filed from the prison where plaintiff was housed at the time of filing. The E-File Request form submitted by plaintiff to the prison indicates that 21 pages were scanned by prison staff. ECF No. 1 at 11. However, only thirteen pages appear on

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1 the court's docket.<sup>1</sup> See ECF No. 1. These pages contain an introduction, a jurisdictional  
2 statement, and a list of the parties, but they do not contain any substantive allegations of civil  
3 rights violations committed by defendants. The court is unable to screen plaintiff's complaint  
4 absent the missing pages. See 28 U.S.C. § 1915A(a) (requiring screening of complaints brought  
5 by prisoners seeking relief against a governmental entity or officer). The court will vacate  
6 plaintiff's complaint as it is incomplete, but it will grant plaintiff leave to file an amended  
7 complaint that includes the missing pages.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's complaint is vacated.
- 10 2. Plaintiff is granted thirty days from the date of service of this order to file an amended  
11 complaint.
- 12 3. An amended complaint should contain the docket number assigned this case and must  
13 be labeled "First Amended Complaint."
- 14 4. Failure to file an amended complaint within the time provided will result in a  
15 recommendation that this action be dismissed.

16 DATED: October 19, 2023

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18 ALLISON CLAIRE  
19 UNITED STATES MAGISTRATE JUDGE  
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28 <sup>1</sup> The court acknowledges and emphasizes that this error is not attributable to plaintiff in any  
fashion.